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THE SITUATION OF DEMOCRACY AND HUMAN RIGHTS IN HAITI

Report of the Secretary-General

1. On 24 November 1992, the General Assembly considered, for the second year in a row, the situation of democracy and human rights in Haiti, on the basis of the report which I submitted (A/47/599 and Corr.1 and Add.1) pursuant to paragraph 6 of resolution 46/7 of 11 October 1991. The report reviewed the efforts made by the international community, since the coup d'état of 30 September 1991, to resolve the Haitian crisis. It also gave a brief overview of the humanitarian situation prevailing in Haiti, and of human rights violations that continue to be committed there. These violations were analysed in depth by the Special Rapporteur of the Commission on Human Rights in his report to the General Assembly (A/47/621) and in his latest report to the Commission.

2. At the close of that debate (see A/47/PV.71), the General Assembly adopted resolution 47/20 of 24 November 1992, the text of which reads as follows:

"The General Assembly,

"Having considered the item entitled 'The situation of democracy and human rights in Haiti',

"Recalling its resolutions 46/7 of 11 October 1991 and 46/138 of 17 December 1991, as well as the relevant resolutions and decisions adopted by the Economic and Social Council, the Commission on Human Rights and by other international forums,

"Welcoming resolutions MRE/RES.1/91, 1/ MRE/RES.2/91 2/ and MRE/RES.3/92, adopted on 3 and 8 October 1991 and 17 May 1992, respectively, by the Ministers for Foreign Affairs of the member countries of the Organization of American States,

"Also welcoming resolution CP/RES 594 (923/92) on the re-establishment of democracy in Haiti, adopted by the Permanent Council of the Organization of American States on 10 November 1992,

"Considering that, despite the efforts of the international community, the legitimate Government of President Jean-Bertrand Aristide has not yet been re-established and that civil and political liberties continue to be trampled upon in Haiti,

"Greatly alarmed by the persistence and worsening of gross violations of human rights, in particular summary and arbitrary executions, involuntary disappearance, reports of torture and rape, arbitrary arrests and detentions, as well as the denial of freedom of expression, of assembly and of association,

"Concerned that the persistence of this situation contributes to a climate of fear of persecution and economic dislocation which could increase the number of Haitians seeking refuge in neighbouring Member States and convinced that a reversal of this situation is needed to prevent its negative repercussions on the region,

"Welcoming the measures taken by the Secretary-General of the United Nations to lend his support to the Organization of American States, in particular the participation of his personal representative in the mission of the Secretary-General of the Organization of American States to Haiti, from 19 to 21 August 1992,

"Taking into account its resolution 47/11 of 29 October 1992 on cooperation between the United Nations and the Organization of American States,

"Taking note of the report of the Secretary-General on the situation of democracy and human rights in Haiti, 3/

"Taking note also of the statement by the Secretary-General in his report on the report of the Organization, in which he declares that he stands 'ready to help in any other way to resolve the Haitian crisis', 4/

1/ See A/46/231, annex, appendix.

2/ See A/46/550-S/23127, annex.

3/ A/47/599/Corr.1 and Add.1.

4/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 1 (A/47/1), sect. IV, para. 119.

"Aware that, in accordance with the Charter of the United Nations, the Organization promotes and encourages respect for human rights and fundamental freedoms for all, and that the Universal Declaration of Human Rights states that 'the will of the people shall be the basis of the authority of government', 5/

"Recognizing the urgent need for an early, comprehensive and peaceful settlement of the situation in Haiti in accordance with the Charter of the United Nations and international law,

"1. Strongly condemns again the attempted illegal replacement of the constitutional President of Haiti and the use of violence and military coercion and the violation of human rights in that country;

"2. Reaffirms as unacceptable any entity resulting from that illegal situation and demands the restoration of the legitimate Government of President Jean-Bertrand Aristide, together with the full application of the National Constitution and hence the full observance of human rights in Haiti;

"3. Takes note of the efforts by the Secretary-General of the Organization of American States to seek the implementation of the resolutions adopted by that organization;

"4. Affirms that the solution of the Haitian crisis should take into account resolutions MRE/RES.1/91, MRE/RES.2/91, MRE/RES.3/92 and CP/RES 594 (923/92) of the Organization of American States;

"5. Requests the Secretary-General of the United Nations to take the necessary measures in order to assist, in cooperation with the Organization of American States, in the solution of the Haitian crisis;

"6. Urges the States Members of the United Nations to renew their support within the framework of the Charter of the United Nations and international law by adopting measures in accordance with resolutions MRE/RES.1/91, MRE/RES.2/91, MRE/RES.3/92 and CP/RES 594 (923/92) adopted by the Organization of American States, especially as they relate to the strengthening of representative democracy, the constitutional order and to the embargo on trade with Haiti;

"7. Also urges the States Members of the United Nations and other international organizations to increase their humanitarian assistance to the Haitian people and to support all efforts to resolve the problems associated with displaced persons, and encourages, in this context, the strengthening of the institutional coordination established among United Nations agencies, as well as between the United Nations and the Organization of American States;

"8. Calls upon the international community to refrain from supplying materials for the use of military forces or police in Haiti, including

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5/ Resolution 217 A (III), art. 21, para. 3.

arms, ammunitions and petroleum, until the present crisis has been resolved;

"9. Emphasizes that an increase in technical, economic and financial cooperation, when constitutional order is restored in Haiti, will be necessary to support its economic and social development efforts in order to strengthen its democratic institutions;

"10. Requests the Secretary-General to submit to the General Assembly by mid-February, at a resumed session, a report on the implementation of the present resolution;

"11. Decides to keep open the consideration of this item until a solution to the situation is found."

3. The present report is being submitted pursuant to paragraph 10 of resolution 47/20.

4. Following the adoption of the resolution, I appointed, on 11 December 1992, Mr. Dante Caputo, of Argentina, as my Special Envoy for Haiti in order to assist me, in cooperation with the Secretary-General of the Organization of American States (OAS), in the solution of the Haitian crisis. On 13 January 1993, the Secretary-General of OAS, Mr. João Baena Soares, appointed Mr. Caputo as his Special Envoy also.

5. The Special Envoy held a series of preliminary consultations between 17 and 22 December 1992 in Washington, D.C., with President Jean-Bertrand Aristide and at Port-au-Prince with the Coordinator and members of the Presidential Commission, with the Commander-in-Chief of the Haitian Armed Forces and other members of the Army High Command, with the Prime Minister of the de facto Government, Mr. Marc Bazin, and with the Presidents of the two Chambers of the National Assembly of Haiti. The Special Envoy also met in New York with the representatives of Canada, France, the United States of America and Venezuela, whom I have requested to assist me in my endeavours in the capacity of "Friends of the Secretary-General", and in Washington, D.C., with the Secretary-General of OAS.

6. Following further discussions, which Mr. Caputo held with President Aristide in Washington, D.C., early in the new year, the President of Haiti addressed a letter to me on 8 January 1993, whereby, among other things, he requested the following:

(a) The deployment by the United Nations and OAS of an international civilian mission to monitor respect for human rights and the elimination of all forms of violence;

(b) The establishment of a process of dialogue among the Haitian parties, under the auspices of the Special Envoy, with a view to reaching agreements for the solution of the political crisis, the designation of a Prime Minister by the President to lead a Government of national concord aimed at the full restoration of democratic order in Haiti; agreements for the rehabilitation of Haitian institutions, including the reform of the judicial system, the professionalization of the armed forces and the separation of the police from

the armed forces; international technical assistance for national reconstruction; and a system of guarantees to ensure a lasting solution.

7. The President stated that, if a major international presence was deployed throughout Haiti, it would be essential for all sectors of Haitian society to help facilitate its practical operations so that it could carry out its fundamental mandate of ensuring respect for human rights. His contribution to achieving this objective, and also to alleviating the economic situation, would be - once the international mission was deployed throughout Haiti and the Special Envoy certified that tangible progress was being made both in the situation with regard to respect for human rights and in resolving the political crisis - to request the international community to lift gradually the economic measures against his country so as to help the civilian mission fulfil its mandate successfully. If the general framework described in his letter was accepted, the President would undertake, after the Prime Minister chosen by him had been confirmed, to request the international community to lift the economic measures, and, at the same time, he would try to mobilize international financial assistance for rebuilding Haiti's economy.

8. The text of President Aristide's letter to me is reproduced in annex I to the present report. An identical letter was addressed by the President of Haiti to the Secretary-General of OAS.

9. Following the receipt of President Aristide's letter, the Special Envoy held meetings at Port-au-Prince on 16 and 17 January 1993 with General Raoul Cedras, the Commander-in-Chief, with the High Command of the Haitian Armed Forces and with Mr. Marc Bazin. Before his departure from Port-au-Prince, Mr. Caputo received two letters, one from General Cedras and the other from Mr. Bazin, accepting in principle an international civilian mission and a dialogue among the Haitian parties to resolve the political crisis in the country.

10. In a letter dated 18 January 1993 (see annex II) replying to President Aristide's letter, I agreed to the United Nations participation in the International Civilian Mission to Haiti with the task of verifying respect for human rights and the eradication of all forms of violence in Haiti, subject to the approval of the General Assembly and under terms to be jointly agreed with OAS. I added that the solution of the Haitian political crisis, within the framework proposed by the President and with the objective of restoring the President to his constitutional functions, as well as the full implementation of the national constitution and the establishment of a stable democracy, were objectives that were to be accomplished without obstacles or delays. I stated further therefore, that if the Special Envoy brought to my attention that either party was obstructing the process of the negotiations, I would bring the matter to the attention of the General Assembly and any other competent United Nations body in order that they might take appropriate measures.

11. Faced with the announcement by the de facto Government that it was proceeding with the holding of elections for a third of the Senate, the Permanent Council of OAS adopted, on 13 January 1993, a declaration repudiating the elections and declaring them to be "illegitimate" and obstructive of the efforts being carried out by OAS and the United Nations towards the restoration of the democratic institutional framework in Haiti. My concurring views were

brought to the attention of the de facto authorities by the Special Envoy when he visited Haiti on the eve of the elections. I regret that my request that the elections be cancelled was not heeded, for I fear that they might significantly complicate the efforts to return Haiti to democratic legality. The level of voter participation in them was by all accounts extremely low.

12. The Special Envoy subsequently discussed with me and with the Secretary-General of OAS the mandate of the International Civilian Mission and the way it would operate. Our joint ideas were subsequently agreed upon by President Aristide. The main points of that agreement was as follows: the International Civilian Mission in Haiti was to be composed of a United Nations and an OAS contingent of equal strength, each headed by a Director, who would report on the conduct of the Mission, through the Special Envoy, to the Secretaries-General of the two organizations, who, in turn, would report to the competent organs of each organization. Following subsequent recommendations of a team of three human rights experts whom I dispatched to Haiti from 15 to 22 February 1993 for the purpose of determining how best the tasks of the Mission should be undertaken (see annex III), I would now propose that the Mission be as integrated as possible and that, instead of two Directors, the Mission be headed by one Head of Mission, appointed jointly by the Secretary-General of OAS and by me, with a Director for Human Rights working immediately under him, and an integrated structure down to the level of Local Office Coordinator (see annex III, paras. 58-60).

13. Under the agreement, the Mission's main objective will be to verify respect for human rights as laid down in the Haitian Constitution and in the international instruments to which Haiti is a party, in particular, the International Covenant on Civil and Political Rights and the American Convention on Human Rights. The Mission shall devote special attention to the observance of the rights to life, to the integrity and security of the person, to personal liberty, to freedom of expression and to freedom of association. Among the faculties of the Mission is the entitlement to receive communications relating to alleged human rights violations, to visit freely any place or establishment, to enjoy entire freedom of movement within Haitian territory, to interview anybody freely and privately, to make recommendations to the authorities and verify their follow-up, to undertake a public information and education campaign on human rights and to use the media to the extent useful for the fulfilment of its mandate. It is understood that the mandate of the Mission does not in any way preclude resort to other international procedures for the promotion and protection of human rights.

14. The agreement also provides that once the Mission has been deployed, the Special Envoy will undertake discussions for the purpose of evaluating ways and means through which the United Nations and OAS may assist in reinforcing democracy, accelerating economic development and professionalizing national institutions, in particular, the judicial system, the armed forces and the police.

15. The terms of the agreement described above were subsequently incorporated in an exchange of letters between the de facto Mr. Bazin and the Special Envoy on 9 February 1993.

16. Pending the approval of the General Assembly, I dispatched to Haiti on 13 February 1993 an advance team, together with a survey group, which included field operations and security personnel, for the purpose of making the necessary preparations for the deployment of the United Nations component of the Mission. On the OAS side, some 100 observers had been deployed by 21 March 1993. The recommendations in this report and the detailed operational arrangements which will be set out in my budget proposals, assuming that the General Assembly approves my recommendations, are based upon those of the survey group, as well as on the report submitted by the team of three international human rights experts (see para. 12 above), which includes recommendations on the deployment of the Mission throughout Haiti, the modalities of its operation and its needs in terms of personnel and resources.

17. Since the beginning of this month, the Special Envoy has begun consultations for the purpose of seeking a political solution to the Haitian crisis. The immediate objective of these consultations is to achieve agreement on three main issues, namely the return of President Aristide to Haiti, the appointment of a Prime Minister to head a government of national concord and the question of amnesty. Other issues that will need to be tackled include the question of the embargo, technical assistance for the economic and institutional reconstruction of the country, the nature and duration of the international presence in Haiti, coupled with international guarantees to ensure compliance with the agreements arrived at.

18. On the basis of what I have reported above and along the lines of the proposals made by the human rights experts (see annex III), I recommend that the General Assembly establish the United Nations component of a United Nations/OAS joint International Civilian Mission in Haiti.

Annex I

Letter dated 8 January 1993 to the Secretary-General from the President of Haiti

As President of the Republic of Haiti, my first concern at the present time would be to see an end to the suffering and violence inflicted on the people of Haiti and the full restoration of democracy in my country. I note that the international community shares these aims, as is demonstrated by the resolutions adopted and the action taken by the Ministers for Foreign Affairs of the Organization of American States (OAS) and by the United Nations General Assembly at its forty-sixth and forty-seventh sessions.

I am convinced, therefore, that the United Nations and the Organization of American States are currently the best place to turn for assistance in eradicating all forms of violence and violations of the rights of the person in Haiti, resolving the political crisis and mobilizing the international resources needed to solve my country's structural problems.

Early last year, with the invaluable political backing of the Ministers for Foreign Affairs of the Americas and thanks to the efforts of the Secretary-General of OAS, it was possible to conclude an agreement, which, unfortunately, was not put into effect. Soon afterwards, talks led to the initial deployment of an OAS civilian presence in Haiti, as requested by me on 7 October 1991. This civilian presence has some impact, but unfortunately it is not enough.

Accordingly, in my capacity as President of Haiti, I appeal to you to mobilize the global and regional resources available to the international community, in keeping with our Constitution, international law and the resolutions on the Haitian crisis adopted by OAS and the United Nations, in order to achieve the following goals:

(a) To reassure all the parties concerned that the current political crisis will be settled only by eliminating all forms of violence and violations of the rights of the person. This means that all sectors of Haitian society have to make the following commitments, the observance of which will be supervised by an international mission:

(i) Respect for the life and integrity of all Haitians;

(ii) Respect for the Haitian Constitution, the law and the procedures established by and the principles set forth in the International Covenant on Civil and Political Rights and the American Convention on Human Rights, to which Haiti is a party;

(iii) Respect for the constitutional rights of all Haitian citizens and for the institutions of the Republic.

To verify these commitments, I request that the United Nations and OAS, using the initiatives launched by OAS wherever possible and respecting the Constitution of Haiti, deploy a multinational presence in the country and assist in its establishment by holding consultations in Haiti as soon as possible. Of

course, if a major international presence is deployed throughout the territory of the Republic, it is essential that all sectors of Haitian society help facilitate its practical operations so that it can carry out its fundamental mandate of ensuring respect for human rights. My contribution to achieving this objective, and also to alleviating the economic situation, will be - once the international mission is deployed throughout the territory of the Republic and if your Special Envoy certifies that tangible progress is being made both in the situation with regard to respect for human rights in Haiti, as this letter requests, and in resolving the political crisis - to request the international community to lift gradually economic sanctions so as to help the civilian mission fulfil its important mandate successfully.

(b) The strengthening of democratic institutions and the rebuilding of the national economy, so that the solution of the present crisis leads to my return as President and to the establishment of lasting democracy. To that end, once the above commitments are made, which presupposes a return to constitutional guarantees, I request that your Special Envoy promote and supervise a process of dialogue between the Haitian parties with a view to securing as soon as possible:

(i) Commitments such as I have described in this letter aimed at solving the political crisis;

(ii) My appointment of a Prime Minister to preside over a government of national consensus which will have a mandate to restore democracy completely in Haiti;

(iii) Commitments to overhaul the country's institutions, including the following minimum immediate measures: reform of the judicial system, professionalization of the armed forces and separation of the police from the armed forces;

(iv) International technical assistance to carry out this institutional reform as soon as possible;

(v) A system for guaranteeing fulfilment of these commitments so that they provide a lasting solution.

If the general framework described in this letter is accepted, I undertake, with a view to alleviating my country's economic situation and after the Prime Minister I choose has been confirmed, to request the international community to lift the economic measures taken against my country. At the same time, I shall try to mobilize international financial assistance for rebuilding Haiti's economy.

I should be grateful, Sir, if you would expedite any steps which you or your Special Representative may take to achieve these goals as soon as possible.

(Signed) Jean-Bertrand ARISTIDE

Annex II

Letter dated 18 January 1993 to the President of Haiti from the Secretary-General

I am pleased to acknowledge receipt of your letter of 8 January, which leads me to hope that a lasting solution will soon be found to the Haitian crisis, thereby reviving the democratic process which was interrupted.

When he last visited Haiti, my Special Envoy won the support of the High Command of the Haitian Army and the de facto Government for the proposals you put forward for resolving the Haitian crisis and, in particular, for the dispatch to Haiti of an international civilian mission. The Commander-in-Chief of the Haitian Armed Forces (FAD'H), General Raoul Cédras, sent him a letter stating that the High Command supports that initiative. The de facto Prime Minister also wrote to assure him of full support for his activities. Both letters expressly refer to the dialogue to be initiated between the Haitian parties and the international civilian mission to be sent to that country.

I am confident that all the parties that have pledged support for your initiative will respect it together with the framework laid down in your letter for the settlement of the crisis.

I wish to assure you that the United Nations is prepared to participate in the international civilian mission entrusted with the task of verifying compliance with human rights commitments, subject to the approval of the General Assembly and the conditions agreed upon with the Organization of American States.

The on-site presence of the mission will enable me to keep the United Nations General Assembly informed of any human rights violations that occur in Haiti.

There should be no impediment or delay in achieving a solution of the Haitian political crisis in the framework you are proposing and with the object of reinstating you in the Presidency, ensuring full implementation of the Constitution and the establishment of a stable democracy in Haiti. Accordingly, if my Special Envoy informs me that either party is hampering the negotiating process, I shall draw the attention of the General Assembly and any other competent United Nations body to that fact so that they can take appropriate measures.

I am convinced that the government of national consensus that you propose to establish will help to create a climate favourable to the achievement of the objectives identified in your letter. On the other hand, I am afraid that the senatorial elections held on 18 January are not only in contravention of General Assembly resolutions, but are also blocking a speedy solution of the crisis. My Special Representative has transmitted this message to the de facto authorities.

In conclusion, I should like to convey to you the assurance that my Special Envoy will expedite his task as much as possible in the various areas discussed in your letter.

(Signed) Boutros BOUTROS-GHALI

Annex III

Report submitted to the Secretary-General by the team of human rights experts on the International Civilian Mission to monitor respect for human rights in Haiti

1. Immediately after the Secretary-General's Special Envoy for Haiti announced on 9 February 1993 that agreement had been reached for the deployment by the United Nations and the Organization of American States (OAS) of an International Civilian Mission in Haiti (hereafter "the Mission") to monitor respect for human rights and the elimination of all forms of violence, three independent experts were asked to undertake a one-week visit to Haiti in order to advise on the needs of the United Nations component of the Mission and to prepare an operational plan for carrying out those functions. The team of experts comprised:

Professor Yvon Le Bot, sociologist at the Centre National de la Recherche Scientifique (CNRS); professor at the Université de Paris (Sorbonne nouvelle)

Fr. Michael Czerny, S.J., Secretary for Social Justice, Jesuit Curia, Rome; former Director of the Human Rights Institute "Segundo Montes, S.J." (IDHUCA) at the Central American University, San Salvador

Mr. Ian Martin, Senior Associate, Carnegie Endowment for International Peace (Washington, D.C.); former Secretary General of Amnesty International, London

Their report follows.

I. INTRODUCTION

2. After being briefed in New York, we visited Haiti from 15 to 22 February. We met the Presidential Commission appointed by President Aristide, the Commander-in-Chief of the Haitian Armed Forces (FAD'H) with other members of the High Command, the Chief of Police at Port-au-Prince, the de facto Prime Minister with other de facto Ministers, representatives of the Plate-forme des organismes haïtiens des droits de l'homme and of several other non-governmental organization, and members of churches and religious orders. We made visits to the Département de l'Artibonite (principally the communes of Gonaïves and Dessalines), the Département du Centre (principally the commune of Hinche) and the Département de l'Ouest (principally the commune of Petit Goâve), and to two urban slum areas of Port-au-Prince, Cité Soleil and Carrefour. Wherever possible, we met with local military and civilian authorities, as well as with church representatives and others.

3. In view of the understanding already reached between OAS and the United Nations regarding the coordination and harmonization of the function of both groups comprising the joint Mission, we have addressed ourselves to the needs of and operational plan for the overall Mission.

4. The International Civilian Mission in Haiti is in many respects unprecedented, including its nature as a joint mission between the United Nations and a regional organization. Nevertheless, the experience of the OAS and of the United Nations Observer Group for the Verification of the Elections in Haiti (ONUVEH) in verifying the December 1990/January 1991 elections in Haiti does have relevance for the operational planning of the Mission, and a few OAS and United Nations personnel already involved in the Mission bring this prior experience with them.

5. The Mission's terms of reference have been drawn substantially from the Agreement on Human Rights (A/44/971-S/21541, annex) signed at San José, Costa Rica, by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) (signed July 1990, implemented July 1991). We have tried to take account of the experience of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) in verifying the observance of that Agreement and had a brief discussion with the Director of the Division while he was visiting New York. We strongly recommend that ways be found of continuing to ensure that experiences of monitoring human rights already gained from other operations - ONUSAL, the human rights component in Cambodia, the transition in Namibia - are taken into account in planning and implementing the Mission in Haiti and any similar operations in future.

II. SPECIAL CHARACTERISTICS OF THE HUMAN RIGHTS SITUATION IN HAITI

6. Fact-finding on the human rights situation in Haiti, which would be difficult to do during such a short visit, was outside our mandate. Such reports have been done by Mr. Philippe Texier and Professor Marco Tulio Bruni Celli as Independent Experts and latterly Special Rapporteur appointed by the Commission on Human Rights. In addition to these reports, we have relied on the reports of non-governmental organizations inside and outside Haiti, particularly the reports of the Plate-forme des organismes haïtiens des droits de l'homme, the Commission justice et paix of the Catholic Church in Haiti, Amnesty International, Americas Watch, the Lawyers Committee for Human Rights and the National Coalition for Haitian Refugees. Before travelling to Haiti we were briefed by representatives of the three latter organizations, which are based in New York. All the reports of non-governmental organizations consistently describe the enduring and systematic human rights violations perpetrated since the coup d'état, as well as the long-standing institutional context of violations in Haiti. The information we received and our impressions during our visit were in turn entirely consistent with the picture gained from these reports, and we do not attempt to summarize them here.

7. A number of special features of the situation in Haiti characterize the context in which the Mission must carry out its mandate and differentiate it from Cambodia, El Salvador, Namibia and other examples of international civilian missions.

8. The first such characteristic is the absence in Haiti of any police force separate from the army, although this has been a requirement of the Constitution since 1987. The FAD'H retains all police functions, as well as control over the country's prisons and detention facilities. The police operate as an urban

division of the army, and army officers and men are rotated to units carrying out police functions without receiving any police training. In rural areas, maintaining law and order is the responsibility of section chiefs appointed by the local military commander. Section chiefs can by law appoint two assistants (attachés), but in practice are said to appoint large numbers of them. Human rights violations are attributed to the FAD'H directly, to attachés operating with the police in urban areas and to section chiefs and their assistants.

9. A second characteristic is the particular pattern of human rights violations. The FAD'H carried out the coup d'état of 30 September 1991 and the repression which followed it and have been strongly opposed to the return of President Aristide, and for these reasons the FAD'H and the de facto authorities are the main objects of popular resentment and criticism. In response, almost all forms of popular organization and activity have been targeted for repression, and many of the extrajudicial executions, disappearances, arbitrary arrests and cases of torture and ill-treatment since the coup d'état have been intended to suppress support for the President. Inextricably interwoven with this pattern is an extremely high prevalence of corruption among both members of the FAD'H and the section chiefs, and many arbitrary arrests followed by torture and ill-treatment, sometimes resulting in death, seem to be a way of extorting payment as well as repressing those known or presumed to support President Aristide.

10. A third characteristic is the extreme weakness of civilian authorities, in particular the justice system. It is widely acknowledged, including by the FAD'H and the de facto authorities, that the judicial institutions - whose local presence at most consists in only 117 justices of the peace spread throughout the whole country* - wholly lack the resources and training to cope with cases of even the most common crimes, to say nothing of systematic corruption and abuses of State power. Under the Constitution, the civilian courts have jurisdiction over cases involving alleged abuses committed by military personnel against civilians. However, all observers agree that intimidation and intervention by the military combine with the general weakness of the judicial system to make it impossible in practice for a Haitian whose rights are violated to seek relief in the civilian courts. It is almost inconceivable under present circumstances for actions against the military to be initiated, and the few courageous lawyers who have been willing to defend supporters of President Aristide or other victims of human rights violations have been seriously threatened and harassed.

11. A fourth characteristic is the simultaneous existence of a de facto Government that is not recognized internally or externally as legitimate and an elected President who enjoys enormous popular support and whose legitimacy is represented within the country by a Presidential Commission, as well as elected parliamentarians and local representatives with diverse political perspectives. This presents obvious institutional and political complexities.

12. Despite the limited freedom of expression permitted in practice since the coup d'état and the risks involved in activities regarded as threatening to the

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* Other reports give 133 as the number of justices of the peace.

military, local human rights monitoring has been carried out with quality as well as courage. The Plate-forme des organismes haïtiens des droits de l'homme collates and disseminates the monitoring by various organizations which it regards as reliable. Our impression is that the extent to which human rights violations are monitored and reported inevitably varies considerably from one area to another. The extent to which the Mission can draw upon the monitoring of local organizations will vary correspondingly. It also follows from the non-functioning of the judicial system regarding military violations of human rights that non-governmental organizations in Haiti have virtually no possibility at present of going beyond monitoring and reporting to intervene and provide representation in individual cases, although occasionally representations by the church to local authorities are said to have some effect.

III. INITIAL EFFECTS OF THE MISSION AND RELATION TO FUTURE POLITICAL DEVELOPMENTS

13. Several informants said that the arrival last year of the OAS mission (despite the severe restrictions placed upon its functioning), the recent announcement of the joint United Nations/OAS Mission and the arrival of the first United Nations and additional OAS observers had already led to some reduction in the incidence of human rights violations and to a climate in which political activity was beginning to increase or be planned. We ourselves found in many conversations that great hope was placed upon the role of the Mission, and while the difficulties it could face were clearly seen, no one felt that it should not be attempted. Our assessment is that the deployment of an observer presence in all Departments and increasing visibility of the Mission can indeed have a further inhibiting effect on political repression and permit greater freedom of expression and some resumption of the activity of popular organizations. We are also optimistic that the penetration of observers to rural sections, as proposed below, can inhibit some of the most overt forms of abuse of the rural population.

14. This initial effect of the Mission will be intensified if it undertakes, as recommended below, an active and far-reaching information campaign. Its inhibitive effect on human rights violations is likely in this way to anticipate to some extent the penetration of an observer presence to all communes and sections.

15. While this represents a positive assessment of the early effect the Mission can have on the immediate situation in Haiti, we predict the rapid emergence of serious problems for the Mission if many months elapse before a legitimate government enjoying public confidence returns to power. If the Mission is indeed initially successful in raising the confidence of the population, it will lead rapidly to increasingly assertive attempts to exercise freedom of expression. The overwhelming preponderance of freely expressed political, popular and journalistic activity can be expected to challenge the de facto authorities and the human rights record of the military and to demand the early return of President Aristide. On the other hand, we found little indication that the military and de facto authorities are prepared to tolerate such activity in practice. It is also possible that political groups opposed to President Aristide, and perhaps to the presence of the Mission, may independently of the military seek to provoke difficulties.

16. The credibility of the Mission will depend crucially on its ability not merely to report on human rights violations but to bring about redress and prevent future violations. The institutional weaknesses in Haiti are so severe that its ability to do this for any substantial period before institutional reform is embarked upon will inevitably be limited. At the same time, it is our conviction that meaningful institutional reform cannot commence until a legitimate government is in place and other crucial preconditions exist.

17. Opinions differ as to whether there is a serious risk of acts of popular vengeance against those seen as responsible for past human rights violations. The majority of those we asked believed this to be unlikely, although it could depend on whether proper processes for seeking justice are opened up. It is, however, more likely if popular confidence in the ability of the Mission to inhibit army reprisals grows, if popular frustration at the delay in the return of President Aristide becomes intense, and if there is no legitimate government able and willing to discourage acts of vengeance.

18. For all these reasons, we believe that the very success of the Mission could rapidly bring difficulties that would imperil its further success, and perhaps the security of its personnel. We find it hard to envisage the Mission performing successfully the role of protecting human rights, including freedom of expression and association, for more than a few months, without clear progress towards a political solution of the crisis satisfactory to the majority of the population.

IV. THE TASKS OF THE MISSION

A. Observing/monitoring the human rights situation

19. The Mission's first task is to make its presence felt as pervasively as possible through Haiti. We recommend that the Mission be known in Haiti by its Creole name:

Misyon Sivil Entênasyonal
OEA/ONU

As soon as local offices are established, and to some extent before, observers should systematically visit communes, and later sections, to make the Mission's presence visible. They should introduce themselves to the FAD'H, to elected representatives, to civil and judicial officials, and to section chiefs. They should at the same time meet representatives of the churches, human rights organizations and other non-governmental/popular organizations that are or have been active in the area.

20. The de facto authorities recognize the Mission's right of access to all places and establishments, to meet freely and in confidence with anyone and to establish itself anywhere. It needs to be rapidly asserted in practice that this faculty means unaccompanied access without prior notice. This important faculty of the Mission needs to be explained very carefully - in Creole - to the population at large and to the FAD'H. We recommend that the High Command be asked to issue strong and explicit instructions to this effect, and that all

observers carry authenticated copies of the Creole text of these instructions for presentation to anyone blocking the Mission's access.

21. The right of access should not only be exercised in the investigation of cases. As soon as the availability of its personnel and basic training and guidelines permit, the Mission should engage in active verification. It should carry out visits to prisons, places of detention, hospitals and morgues.

22. The Mission will be asked to observe political meetings (indeed it already has been) and other events, including, no doubt, street demonstrations, whether or not these have been authorized. We recognize below the security risks for Mission personnel that may result from this, and in some cases the Mission may need to share its assessment of risk with the organizers, without pressing them not to exercise their right to freedom of expression. In general, we believe that the Mission should be quick to accept invitations to attend demonstrations, meetings, trials and other gatherings (at least until experience shows the need for additional criteria), and must be prepared to send an observer presence to monitor the response to such events, in accordance with guidelines which ensure that observers are not perceived as participating in the event. For this as for other purposes, the inclusion among the personnel of the Mission of people with police backgrounds will be important.

B. Complaints/investigation

23. The Mission is mandated to receive communications regarding alleged human rights violations from any individual or group. On the basis we propose below, the Mission would open offices in all departments. In order to assure people's access to the Mission, the offices should be centrally located and easy to reach, in places where large numbers of people circulate. Locations that would make it psychologically difficult for someone to approach the local office should be avoided. The presence of the Mission may quickly have a dissuasive effect on violations in the immediate area, but at the same time, violations may occur at a distance, or in relatively inaccessible places. This may not only require a visit to the place concerned, but the ability to establish quickly a presence there over one or more nights. For this reason, we recommend below that each departmental office be equipped with at least one mobile unit with sleeping accommodation for its team, which would thus be prepared to move rapidly, to reach even very remote locations and to remain there for several days.

24. The extent to which violations are reported to the Mission will depend on the confidence it can command among the people of Haiti. It would be difficult to exaggerate the importance of the Creole language in all the Mission's relationships with the population. We recommend below that as many Creole-speaking observers as possible be recruited, but there will remain a considerable need for Haitian interpreters. Most informants considered the use of Haitian interpreters to be acceptable as well as inevitable. "We will trust the interpreter because we trust the observer," one peasant said. But interpreters should not work in their home area or district - a rule best applied, if possible, to all local support staff.

25. The extent to which the Mission is able, and trusted to be able, to afford protection to complainants will be a crucial early problem. Observers and all staff must visibly exercise the strictest discretion and carefully keep all documentation secure. Arrangements must always be made to remain in contact with a complainant after first contact with the Mission. The strongest possible representations and protest must be registered and strong swift action taken if even one complainant has been subsequently victimized.

26. In some cases, urgent intervention may be necessary - to save a life, or to end or prevent torture. Guidance for observers on how to act in such circumstances must be available from the beginning of deployment, including instructions on what to do when communication with the local office or headquarters is not immediately possible.

27. A form for documenting and classifying people's accounts of human rights violations must be available from the beginning of deployment. The form developed by ONUSAL should be adapted. Observers need to be trained to listen attentively to the narrative presentation that complainants give, and instructed on what complaints (of ordinary "private" crime or of maladministration) fall outside the mandate of the Mission and cannot be investigated or acted upon. The Mission is not excluded from investigating human rights violations that occurred before the establishment of the Mission. Guidance will therefore be needed on how far back to go in recording and investigating complaints of past violations. Such guidance must be consistent with the overall approach to be taken by the United Nations and the OAS to this issue, on which we comment below.

28. We recommend that from the outset the Mission investigate as far as possible complaints made to it, but the depth of investigation of which the Mission is capable will only develop over time. Initial guidance is needed as to the extent of investigation of which an ordinary observer team should be capable and how to go about seeking to verify versions and sources, including the version of the FAD'H. An important aspect of the orientation and ongoing formation of observers will be their understanding of and sensitivity to Haitian cultural characteristics, including how people report the incidents in which they or their relatives have suffered repression. Central investigative resources to undertake major investigations and advise on lesser ones must also be developed. This requires experience in human rights investigation and the availability of forensic skills, including one or more doctors experienced in examining torture victims. Observers with police backgrounds can play a crucial role. Eventually, the staff of each local office should include some specialized investigative capability.

29. The question of assisting the victim of a human rights violation to seek and obtain some recourse is an exceptionally difficult one in the Haitian context. In the short run, the only effective recourse is likely to be the representations the Mission itself can make to the FAD'H and the de facto authorities. These representations and threatened publicity must be sufficiently vigorous to result in the cessation of ongoing violations (e.g., release from arbitrary detention) and in quick disciplinary action. At some point, the Mission must test the justice system and act to encourage its independence, and should find ways to improve the accessibility of legal assistance, perhaps by developing its own legal assistance programme with the

involvement of Haitian lawyers and non-governmental organizations, or by recommending that non-governmental organizations be funded to develop such programmes. Complainants cannot, however, be encouraged to seek legal remedies that they know are futile and dangerous, and judges must have some reasonable expectation of their safety before they will act with increasing independence. Observers should be sent to observe hearings and trials. The Mission should have the means to ensure that victims of torture or with injuries or conditions otherwise related to human rights violations receive necessary medical treatment.

30. At present, a substantial number of people are living in hiding or semi-hiding away from their homes. Some of them wish, but are unable, to seek asylum in another country. The objective of the Mission is to bring about a situation in which people feel safe enough to return home, and it should develop procedures for monitoring the safety of those who seek its protection in returning to their homes. Guidance will also have to be given as to whether and how the Mission can assist a person who has a well-founded fear of persecution and wishes to leave Haiti. The Mission should keep informed about the development of the in-country processing programme of the Government of the United States of America, as well as the conditions under which other countries offer asylum.

C. Reporting

31. The Mission is charged with presenting official reports and conclusions to relevant international bodies. It is also to put its concerns to the Haitian authorities and take account of their response in formulating its reports and conclusions.

32. The response of the Mission to particular events and cases of alleged violations must be promptly made public. This will be an important way in which the Mission can publicize its role and gain public confidence. In such instances, the relevant authorities must be required to respond rapidly if their response is to be taken into account.

33. The presentation of a comprehensive assessment of the human rights situation in Haiti following the deployment of the Mission should not, however, be undertaken prematurely. In our opinion, a period of three months following the opening of local offices would be the shortest reasonable period for such a comprehensive report to be prepared and tangible progress in respect for human rights to be meaningfully assessed. This would not of course preclude regular confidential reports to the United Nations and OAS Secretaries-General.

D. Freedoms of expression and association

34. Given the political crisis to whose resolution the Mission is expected to contribute, the freedoms of expression and association are among the most sensitive rights to be observed and protected. The International Covenant on Civil and Political Rights (see General Assembly resolution 2200 A (XXI) requires that the right of peaceful assembly shall be recognized, and that "no restrictions may be placed on the exercise of this right other than those which

are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre publique), the protection of public health or morals or the protection of the rights and freedoms of others" (art. 22, para. 2). The language of the American Convention on Human Rights is essentially the same. Since the coup d'état, the reason given for arbitrary detention, beating and even torture has often been the mere possession of political literature (a pamphlet, a flyer, a poster) favouring President Aristide or the Lavalas movement, and as noted above, no demonstrations are currently permitted.

35. Whether invited or not, observers ought to attend both (internal) meetings and (public) acts or demonstrations. The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials should be drawn upon in order to develop materials, suitable to the Haitian context, which explain the limits of the legitimate use of force in policing public acts and in maintaining order. Here again, the Mission's task includes an important educational dimension vis-à-vis the FAD'H, civic and political organizations, the media and the public, bearing in mind that the public's respect for those exercising the function of police depends in good measure on the legitimacy of the regime.

36. While exercising its human rights mandate, the Mission should never miss the opportunity to favour dialogue and contribute to a social climate propitious to the early return of fully constitutional government.

E. Human rights education

37. There is reason to hope that awareness of human rights, especially as applied to the current situation in Haiti by the February agreement, will contribute significantly to resolving Haiti's immediate crisis and represent a step towards the building-up of sound institutions of civilian society. Accordingly, the Mission has enormous responsibilities in the area of public education, and this represents an ongoing programme which must be developed by well-qualified staff at the Mission headquarters and implemented throughout the country.

38. The themes, about which all Haitian citizens and institutions need to be educated especially in the Creole language, include:

(a) Mandate of the Mission;

(b) The basic international instruments of human rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights) and the provisions of the Haitian Constitution;

(c) The meaning of human rights, political freedoms and civic duties;

(d) The specific responsibilities in Haiti, regarding human rights, of all representatives of the State, but especially those serving in the FAD'H;

(e) The understanding of democracy and institutional reform which begins to emerge as the political negotiations proceed and the Mission fulfils its mandate.

39. The Mission should also contribute to the long-term reform of Haiti's institutions by preparing educational materials for use in schools, beginning with the primary level, in churches, and in organizations whose members are especially vulnerable (e.g, peasant groups and cooperatives and neighbourhood groups in the bidonvilles). As institutional reform is able to commence, the Mission will need to have personnel experienced in training the police and judiciary in human rights.

F. Media and public information

40. In so far as openness and transparency are indispensable values, not only for human rights but also for the governance and institutional life of Haiti, the Mission should be equipped with a well-staffed Department for Media and Public Information, responsible for informing the public, civic organizations and the mass media, both national and international, of the Mission's activities and findings.

41. The Mission's transparency and the public's right to know are fully compatible with the confidential démarches which the observers will routinely undertake in informing the authorities of alleged violations and giving them the opportunity to respond. These procedures need to be spelled out very clearly in order to avoid misunderstandings or recriminations.

42. Once human rights cases, situations or trends have been duly handled, the Mission should provide the public with all the relevant information. It is important for the public to know that the Mission has intervened in specific cases or on general issues and that serious efforts have been made, even if unsuccessfully.

43. Since radio is the medium of choice for communicating with the people of Haiti, the media priority for the Mission is to develop its own regular programmes in Creole and rent time for their transmission on existing stations; once there is sufficient capacity and experience, television programmes may be produced as well. Analogously, space should be bought in the newspapers (of all political tendencies, and whether currently published inside or outside Haiti) for regular information bulletins. These programmes and bulletins should be the sole responsibility of the Mission and cannot be subject to discussion, prior review or censorship on the part of any public official or private owner.

44. Besides broadcasting and publishing, the Mission should also make audio-cassettes, video-cassettes, offprints and brochures available for distribution through local offices, non-governmental organizations, churches and governmental bureaux.

45. The Mission is also urged to use press releases and press conferences and to grant interviews. The flow of information within the Mission ought to be very rapid so that the media and the public may be informed as soon as possible after an incident has occurred or a trend has become manifest. At the same

time, it is very important that very clear guidelines establish exactly who is authorized to comment and on which sorts of topics.

46. Since freedom of expression is one of the rights which has been and continues to be violated, it is important that the Mission look into instances of alleged censorship or intimidation of journalists, as well as press for the reopening of radio stations and other media closed or destroyed since the coup d'état. The Mission may also recommend that international agencies contribute to the repair or rebuilding of damaged presses or stations.

47. Finally, both the education and the media departments should be staffed with creative and well-prepared professionals, some of whom are deeply steeped in Haitian culture and the Creole language, so that all communication (aural, visual, verbal, symbolic, printed, transmitted) is directed, first and foremost, to the Haitian people, who themselves have very effective non-technological means for passing on news and information perceived as relevant to their rights and future. In this way, the education and media departments ought to build on the gifts and riches of Haitian culture.

G. The past

48. The Mission's mandate does not exclude the investigation of human rights violations which occurred before February 1993. Guidelines should be prepared so that observers can usefully record all the evidence which complainants wish to bring forward, and the Investigation Department should have at least one experienced staff member who can begin to monitor and systematize this information. Once some experience has been accumulated in this regard, the Head of Mission may wish to recommend an appropriate way of handling past violations to the Secretaries-General.

49. As soon as the Mission has accumulated sufficient evidence regarding past violations, it should undertake a serious reflection on the topics of vengeance and popular justice. But even our brief discussions of these delicate topics encourages us to point out that every single victim of violations, when asked, discarded the possibility, while the spectre of violent vengeance (symbolized by so-called necklacing or "le Père Lebrun") was often raised by those who may have had reason to fear. In the long run, only an independent and well-functioning justice system can overcome this terrible conundrum. In the short run, it will be the Mission's responsibility to reduce fear and to encourage openness without, however, contributing to any culture of impunity, and the churches also have an important role in promoting reconciliation and discouraging all types of reprisals.

V. THE DEPLOYMENT OF THE MISSION

50. A local office should be established in the departmental capital of each of Haiti's nine Departments. We do not believe it is practical to establish offices at a lower administrative level throughout the country, but it is essential that the number of observers attached to each local office and the transportation and other logistical support available to them should be such as to enable them to be mobile throughout the Department in which they are located.

The living conditions in most locations outside of Port-au-Prince will be difficult, with an almost complete absence of recreational facilities, and the environment can be expected to be stressful. Reasonable time - we suggest one week in four - must therefore be allowed for rest and recreation away from the local office, so that one fourth of the assigned observers would be on leave at any time. A core of staff must at all times be present at the local office, which should be open seven days a week. Observer teams should initially always include two observers; and all observers will need periods at the local office for report-writing, continuing formation, etc.

51. We therefore believe that the basic deployment of observers to a local office covering a Department should be 20, including the Coordinator (five of whom will be on leave at any one time). This will be necessary even to allow a small number of observer teams to be out in the sections simultaneously. In view of the importance we attach to the quality of observers and the expected difficulty of rapid recruitment, we recommend an initial deployment of 12 to each local office (three of whom will be on leave at any one time), to be brought up to 20 when recruitment permits. Some staff at each office should have specialized competence in human rights investigation, law and police/security matters. Distances and poor roads require that it be possible for observer teams to sleep over one or more nights away from the local office, and on occasion it may be desirable for an observer team to take up a longer temporary presence in a rural section where there are particular problems. In addition to five robust ordinary vehicles, we therefore recommend that each local office have at least one mobile unit with sleeping accommodations.

52. The option to open one or more additional offices in a Department should be kept under continuous review by the Director of Human Rights and the Coordinator of the local office after the initial deployment. In three Departments we believe it is already clear that a single office will not be sufficient, for reasons of both geography and the seriousness of the human rights situation up to now.

53. The Département de l'Ouest includes the city of Port-au-Prince, with its large bidonvilles of Cité Soleil and Carrefour, as well as rural areas and the Island of Gonave. While the Mission headquarters will be at Port-au-Prince, we believe strongly that the local office(s) for city complainants should not be located with the headquarters office. Instead, there should be two local offices in the north and south of the city, accessible to the inhabitants of Cité Soleil and Carrefour respectively, although not actually situated in the bidonvilles themselves. Since, however, some complainants will inevitably find their way to the headquarters office and should be seen immediately rather than referred on, or may not wish to approach a local office they fear may be insecure, there should be a small team located in the headquarters office to deal with complaints but responsible to a local coordinator in the north or the south of Port-au-Prince. A third local office for rural areas of the Département de l'Ouest should be located at Petit Goave. Regular visits should be made to the Island of Gonave.

54. In the Département de l'Artibonite, there should be two local offices, one in the departmental capital of Gonaïves, the other either at St.-Marc or in the valley, perhaps at Petite Rivière de l'Artibonite. In the Département du

Centre, there should be two offices, one in the departmental capital of Hinche and the other at Mirebalais.

55. In all other Departments there should initially be one local office, probably in the departmental capitals of Jacmel (Sud-Est), Jérémie (Grand Anse), Les Cayes (Sud-Ouest), Fort Liberté (Nord-Est), Cap Haïtien (Nord) and Port-de-Paix (Nord-Ouest). There may, however, be cases where the office would be better located in another town more central to the Department or closer to communes that have been experiencing the most acute pattern of human rights violations. In other cases, communications may make it more practical for a local office to cover communes across the boundary of a neighbouring Department; for example, the eastern part of the Département de la Grand Anse might be more conveniently covered by the proposed local office in Petit Goave than from Jérémie.

56. Thus, the total deployment of observers would be as follows:

Ouest	Port-au-Prince North (12/20)
	Port-au-Prince South (12/20)
	Petit Goave (12/20)
l'Artibonite	Gonaïves (12/20)
	St.-Marc/Petite Rivière (12/20)
Centre	Hinche (12/20)
	Mirebalais (12/20)
Sud-Est	Jacmel (12/20)
Grand Anse	Jérémie (12/20)
Sud-Ouest	Les Cayes (12/20)
Nord-Est	Fort Liberté (12/20)
Nord	Cap Haïtien (12/20)
Nord-Ouest	Port-de-Paix (12/20)

Total Local Offices/Coordinators: 13

Total Observers (including Coordinators): 156/260

We assume that, as agreed, the total number of observers will be divided equally between the two organizations.

57. We anticipate concerns from some that such a number of observers will be extremely difficult to recruit, train and direct, and from others that it will be insufficient to establish as pervasive a continuous presence in all parts of the country as they would like to see. We share the former concern, especially in view of our stress on the importance of the quality, experience, language ability and training of the staff, and the difficult living conditions they will

face. In our view, the recruitment and deployment of observers should proceed only as fast as is consistent with quality and orientation: special efforts might be made to undertake recruitment with regard to both quality and speed. We recognize that it may take some months before the full number of observers can be recruited and deployed, and we recommend that pressures to sacrifice quality of personnel to speed should be resisted in the interests of the overall effectiveness of the Mission. We do not believe that a substantially larger initial deployment would be practical or that it is necessary in order to have a significant impact on the human rights situation. However, we do recommend that the need to strengthen the observer presence and open additional local offices be kept under review after the initial deployment.

VI. THE OPERATION OF THE MISSION

58. The Mission is a joint mission of the United Nations and OAS, and it has already been agreed between the two organizations that "every effort should be made to coordinate and to harmonize the function of both groups in carrying out the mandate of the ... Mission". We recommend that it be as integrated as possible in its operation. This integration could best be symbolized and facilitated if the United Nations and OAS were to name the same person as Head of Mission, reporting directly, equally and simultaneously to the Secretaries-General of both organizations. This principle has already been accepted and its value experienced in practice through the naming of the same person as Special Envoy by both organizations. The institutional arrangements should make clear that the reporting of the Mission is independent of the process of dialogue among the Haitian parties, although of course it is intended that its success should facilitate this.

59. The second in authority in the Mission should be the Director for Human Rights. It is obviously essential that this be a person with excellent experience in the field of human rights. This appointment should be made as soon as possible so that the person appointed may be responsible for the recruitment of staff with human rights expertise, for determining with the Head of Mission the structure of the headquarters and local offices and for placing staff in key positions.

60. The Mission would be structured as follows:

United Nations Secretary-General Secretary-General of the OAS

Special Envoy

Head of Mission

Director of Human Rights

Deputy Directors (5)

Coordinators of the Local Offices (13)

The seniority would be as follows: Head of Mission, Director of Human Rights, Deputy Directors, Local Coordinators. The following suggestions for the

organization of the headquarters staff are tentative in nature and intended to facilitate initial planning; the eventual structure is essentially a matter for the Head of Mission and the Director for Human Rights to decide upon.

Head of Mission

61. The Head of Mission would be responsible for liaison with the representatives of the constitutional Government, the de facto authorities and the commanders of the FAD'H, including the Police. Each of these has appointed someone to serve as liaison with the Mission.

62. The Head of Mission would also have responsibility for assuring good relations with the local churches, business community, representatives of civil society and diplomatic missions.

63. We recommend that the Head of Mission request the regular visit of some human rights experts, every three to six months, for an internal seminar involving the Head of Mission, the Director of Human Rights, the Deputy Directors and some Local Coordinators, in order to exchange experiences, reflect on difficulties and propose improvements in the conduct of the Mission. The Head of Mission has the authority to dismiss and repatriate Observers.

64. A Special Assistant for Security would be responsible for monitoring the security of the Mission in order to advise the Head of Mission on this important aspect.

Director for Human Rights

65. The Director for Human Rights would be responsible for the intellectual discipline, competence and sensitivity with which the observers fulfil their complex functions.

66. The Director is ultimately responsible for forming the staff as human rights observers, for orienting, and if necessary, correcting their work. It seems especially important that the Director show genuine care and moral authority towards the observers. The Director, in consultation with the Head of Mission, is responsible for deploying the observers or for changing their assignments. The Mission ought to have its own helicopter, to permit the Director to make frequent rapid visits to all the local offices.

67. The Director would have responsibility for preparing the reports on human rights which the Head of Mission will submit.

68. The Director should have a Special Assistant for Recruitment who could serve as the liaison with both the United Nations and OAS in selecting the best-qualified applicants for the Mission. It is very important that this Assistant begin working as soon as possible. In addition to recruiting and selecting candidates (which will continue to be a need throughout the term of the Mission), this person would also assist the Director with the initial formation of observers, their supervision and ongoing training.

69. We recommend that the Director for Human Rights produce, as soon as possible, one or more manuals for the guidance of the daily work of the observers and for the orientation of new observers.

Deputy Director, Investigation

70. The Investigation Department receives the daily assessments and advises and assists in the investigation of cases by the local offices. In particularly difficult or significant cases, it may directly assist in or take over the investigation. It is responsible for the ongoing monitoring and systematizing of cases and for designing, supervising and correcting the computerized system. The Investigation Department, with the advice of the Legal Department, produces and, when necessary, revises the forms used in reporting cases (which should be available in both French and Creole). This Department includes a library and documentation centre, responsible for systematizing information and providing it to the other Departments when needed. The Department should build up a relevant library on contemporary Haiti, human rights, judicial systems, good governance, civilian police, professionalized armed forces, etc. The Investigation Department should work closely with local non-governmental organizations in the documentation of current and past human rights violations. The Investigation Department should have personnel experienced in criminal investigation, forensic medicine and military intelligence and should coordinate the work of observers with such experience working in local offices. The number of professionals proposed is six.

Deputy Director, Legal

71. The Legal Department is responsible for developing the legal, constitutional, and human rights thinking (doctrine) of the Mission. The competencies represented should include international human rights law, criminal law, refugee law and the law relating to freedom of expression and association. As it becomes possible for institutional reform to commence, the staff of the Department may need to be increased. The number of professionals proposed is four.

Deputy Director, Public Education

72. (The scope of Public Education has been described in paras. 37-39 above.) The number of professionals proposed is four.

Deputy Director, Media

73. (The scope of media has been described in paras. 40-47 above.) The number of professionals proposed is three.

Deputy Director, Administration

74. While the Head of Mission is ultimately responsible for the unity of a Mission sponsored by two organizations, the Deputy Director for Administration should do everything possible to enhance the cooperation and complementarity between the two administrative structures involved. The responsibilities of the Administration Department include local support staff, receptionists, secretaries and drivers, and infrastructure such as accommodation,

communications, supplies, transportation, etc. Given the importance of the Creole language, it seems wise to name a special assistant responsible for recruiting, orienting and supervising the Haitian translators. The number of professionals proposed is five.

75. The recommended total number of staff at Headquarters (including the Head of Mission, etc.) is 30 professionals.

Local Coordinators

76. The Local Coordinators are responsible for the Mission in their area, for the deployment of observers, and for the gathering of information. Each local office should, as soon as possible, be providing a daily summary of relevant information to the Investigation Department as well as the more complete reports that will be required. The Coordinator is also responsible for liaison with the local authorities, including civilian, judicial and military/police. The role of liaison will require frequent consultation with the Head of Mission, at least until some guidelines can be developed.

77. We cannot emphasize too strongly the importance of the recruitment of well-qualified personnel, especially as observers. The requirements are formidable: language proficiency, maturity and the ability to cope with stress, cultural sensitivity, good judgement in situations of political sensitivity and willingness to live under difficult conditions. This requires an exceptional recruitment operation on behalf of the United Nations and OAS to avoid duplication of effort and maintain consistent standards, and we recommend the designation of a Project Manager to undertake this. The search must be an active one to obtain as wide a pool of candidates as possible, and the choice of appointees selective according to high standards. The office of the Director of Human Rights should be involved as soon as possible in the recruitment process and should be responsible for orienting, as much as possible, the respective United Nations and OAS offices in the recruiting of observers.

78. Among the personnel of the Mission there should be observers with proven experience in police work and criminal investigation.

79. All observers, without exception, should be perfectly fluent in French before arriving in Haiti, and candidates with special capacity in Creole (former residents of Haiti) or affinity for the language (French from Guadeloupe and Martinique, as well as Mauritians and Seychellois) ought to be encouraged to apply.

80. The initial orientation should include Caribbean history and the current sociology, politics, economics and legal system of Haiti, with a special emphasis on its popular culture. We have recommended that the Inter-American Institute of Human Rights should be asked to contribute to the human rights orientation. The reports of non-governmental organizations should be read as orientation on the human rights situation in Haiti.

81. Orientation should include local etiquette and norms of conduct. Limits to fraternizing may need to be established, and all members of the Mission should be reminded to avoid ostentatious consumption in a country marked by grinding poverty.

VII. COOPERATION WITH HAITIAN AND INTERNATIONAL HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATIONS

82. The Mission should work in close cooperation with existing human rights organizations and bodies in Haiti, and we welcome the steps already taken to establish good communication with them. We recommend that such communication be both formal, through the holding of regular meetings with all appropriate non-governmental organizations, and informal. This will enable the Director for Human Rights to inform non-governmental organizations about the Mission's activities, to receive their feedback, to discuss problems that have emerged, and to seek their help in communicating information to the population at large. Communication should occur both at the national level at Port-au-Prince and through local offices. The Director for Human Rights should consider designating a staff member to exercise full-time responsibility for liaison with non-governmental organizations.

83. The Mission should welcome any assistance that international non-governmental organizations can give by providing information to the Mission, participating in the orientation of Mission personnel and making ongoing recommendations for the conduct of the Mission out of their own experience and continuing monitoring of the human rights situation in Haiti.

VIII. SECURITY

84. The safety of Mission personnel, of complainants and of all other persons with whom the Mission comes into contact is a very important responsibility. The security of expatriate professionals and local support staff will not always be easy to assure. There is danger of violence motivated by disagreement with the Mission's presence and purpose, as well as danger of property crime against the Mission's equipment and the belongings of observers.

85. On occasion, the objective of assuring the security of Mission personnel may come in conflict with its responsibility to observe situations in which human rights are threatened. Most obviously, an observer presence at street demonstrations, whether authorized or unauthorized, carries the risk of exposing observers to violence, yet is central to the responsibility and crucial to the credibility of the Mission.

86. The full-time Security Assistant to the Head of Mission will be responsible for monitoring and advising on all security issues. The Head of Mission, with the advice of the Director for Human Rights, will remain ultimately responsible for balancing security and other considerations in the conduct of the Mission.

87. We recommend that at least two members of each local team, while civilians, nevertheless have a police background. Their responsibilities would include exercising special concern for security, advising the Local Coordinator on this and reporting on security, through the Local Coordinator, to headquarters at Port-au-Prince. The observers responsible for security may usefully serve as liaison with the local military authorities, but always in a manner consistent with the Local Coordinator's principal responsibility for liaison with all local authorities.

IX. INSTITUTIONAL REFORM

88. The Mission is mandated to present recommendations regarding situations as well as cases. The investigation of cases by the Mission and the bringing of its findings to the attention of the de facto authorities may check abuses in the immediate future, and every effort should be made to ensure that it results in disciplinary action and some form of redress for the victims. The glaring weakness of existing judicial institutions, however, means that little can be expected in terms of formal justice without major institutional reform, as well as the assurance of continued protection from military intervention. If the Mission is successful, its presence will inhibit the perpetration of human rights violations by the FAD'H, but this cannot be expected to outlive the presence of the Mission unless major reform begins to occur.

89. The most essential elements of such reforms are widely agreed upon: the establishment of a well-trained police force separate from the army and responsible to the Ministry of Justice; and the replacement of section chiefs appointed by the military by agents ruralaux, also responsible to the Ministry of Justice. These measures would be in accordance with the Haitian Constitution, have been recommended by the Independent Experts of the United Nations Commission on Human Rights and are seen as crucial by Haitian and international human rights organizations. The High Command told us that the separation of the police from the FAD'H was accepted in principle, although others have reported that the military have in the past resisted this.

90. The agreement defining the mandate of the Mission also envisages parallel discussions regarding an agenda and timetable for the commencement (démarrage) and execution of institutional reform, notably the reform of the judicial system, the professionalization of the armed forces and the creation of a specialized police force. It is beyond our mandate as human rights experts to comment on what implications the timing of the commencement of such a programme of reform has for the solution of the political crisis. However, viewing it solely from the perspective of achieving real reform of institutions that are critical for the protection of human rights, we are convinced that technical assistance and training cannot effectively precede the return of a Government whose legitimacy is accepted within the country, the establishment of a police force separate from the army and the replacement of the section chiefs by rural agents responsible to the civil authorities. In this context, professionalization of the armed forces must include their withdrawal from internal politics and security responsibilities and the professionalization of their essential constitutional function of guaranteeing the external security and territorial integrity of the country.

91. The inclusion within the staffing of the Mission of human rights professionals, legal experts and people with police experience should, however, facilitate the planning of the eventual commencement of a programme of effective institutional reform when the necessary preconditions exist. The Resident Representative of UNDP informed us that significant funding is available for a programme of democratization, including such institutional reform, and expressed his desire to work closely with the Mission in planning such a programme. We believe that the Director for Human Rights should play a key role in advising on the development of such a programme, which should be carried out within a

multilateral framework. The willingness of Governments to make bilateral assistance available is, of course, welcome, but every effort should be made to avoid premature and uncoordinated initiatives.

92. The Special Rapporteur of the Commission on Human Rights has recommended that "when national and international circumstances so permit, the Secretary-General of the United Nations should send to Haiti one or more human rights specialists to be permanently based at the office of the United Nations Development Programme at Port-au-Prince in order to monitor the human rights situation in Haiti in collaboration with the Centre for Human Rights, the OAS mission there and the Special Rapporteur, to encourage the teaching and promotion of human rights, and to advise the authorities on measures to strengthen public and private institutions for the protection of human rights in Haiti" (A/47/621, para. 99 (j)). This recommendation originally pre-dated the agreement on the joint United Nations/OAS Mission. We suggest that as soon as the Director for Human Rights is appointed, discussions take place with the Special Rapporteur regarding appropriate collaboration between the Mission and the Special Rapporteur and the mechanisms of the Commission on Human Rights. Since the Special Rapporteur is also Chairman of the Inter-American Commission on Human Rights, such discussions could also cover collaboration between the Mission and the Commission.

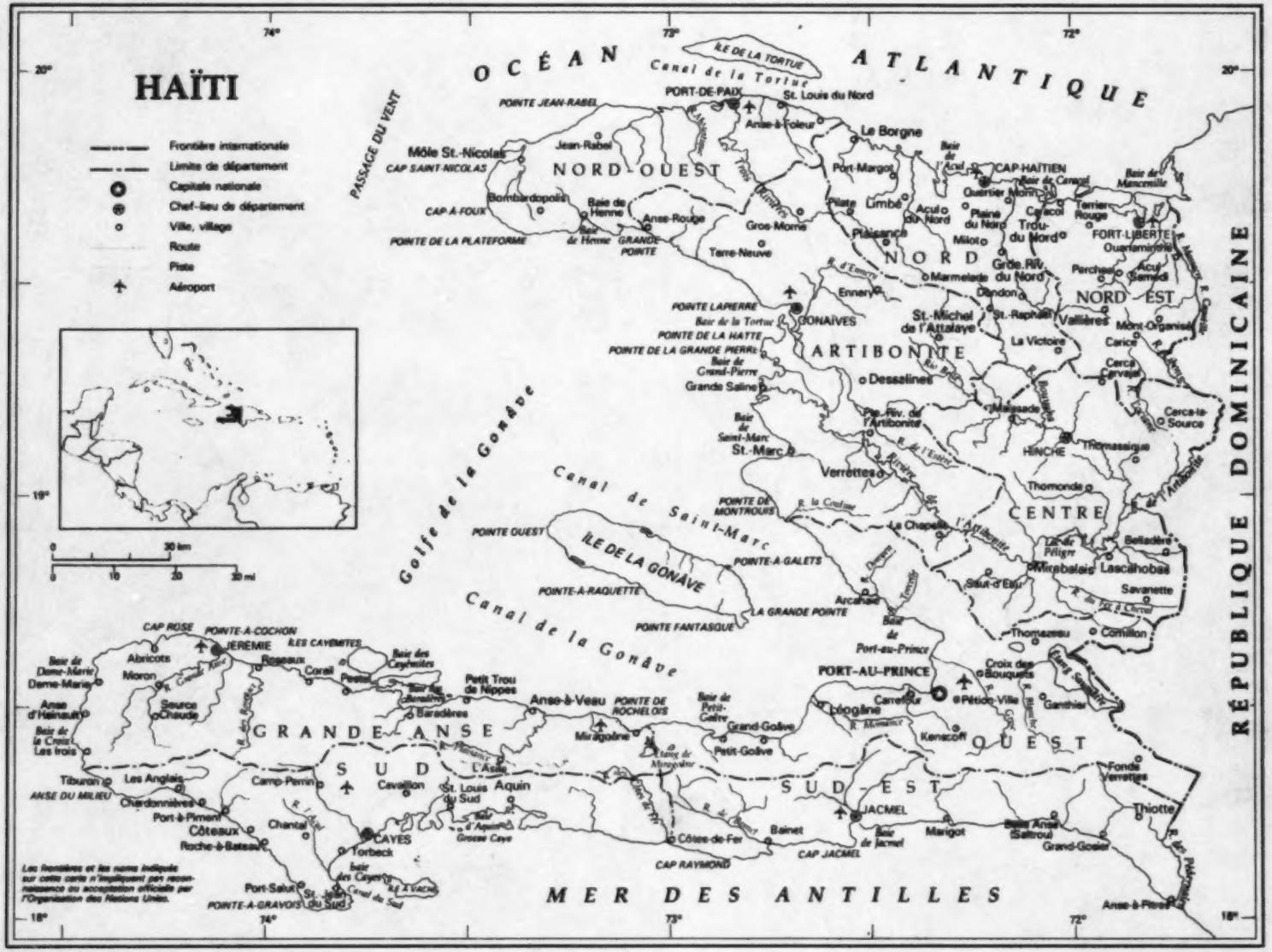
X. PHASING

93. It is important that the local offices be opened and the teams begin work as soon as possible. At the same time, the success of the Mission will depend crucially on the quality of its personnel, both at headquarters and as observers working from local offices, and we have stated above our concern that this quality should not be sacrificed to speed.

94. The carrying out of the work of a human rights mission can be conceived as having three phases - observing, monitoring and investigating - each representing a greater degree of involvement. The planning and deployment of the ONUSAL human rights component took place over a much longer period than is envisaged in Haiti, and it occurred in two phases: a three-month preparation, during which regional offices were set up and the operational and conceptual bases for its future work laid, followed by a second phase of operations in which it began to investigate cases and situations involving allegations of human rights violations and to follow them up systematically with those responsible. The situation in Haiti does not allow for such a phasing, however desirable it might seem, and we recommend that all phases, including investigation of cases, commence as soon as the Mission's personnel and available expertise permit.

95. Assessing the needs of the Mission will be a continuing task and an essential responsibility of the Head of Mission and the Director for Human Rights. Each Coordinator of a local office will need to review the initial experience of observers in the Department and recommend whether the observer presence is adequate or needs to be strengthened, whether and where additional offices should be located and whether and when the observer presence can be reduced. This depends not only on the experience yet to be gained on the ground, but also on the evolution of the human rights situation, which will be

closely related to political developments. Given the complex challenges facing the Mission and the rapidity with which it is being deployed, it is important that a comprehensive review of the operational plan take place not later than September 1993 so that it can be revised in the light of experience. It is also important that the budgetary flexibility exist for an increase of staffing if necessary.



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